



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
LOCAL ASSISTANCE GRANT
NACIMIENTO RESERVOIR TO SAN ANTONIO RESERVOIR
INTERLAKE TUNNEL, SPILLWAY RAISE, AND FISH EXCLUSION SYSTEM
GRANT AGREEMENT NUMBER – Q2081001**

GRANTOR: State of California, acting by and through
The California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

GRANTEE: Monterey County Water Resources Agency
1441 Schilling Place, North Building
Salinas, CA 93901

COVID-19 (Coronavirus) Requirements

Contractor and its subcontractor(s), collectively referred to as “Contractor”, shall follow Federal, State, and local orders, guidelines and directives, and CDFW policies related to COVID-19. Contractor is required to practice physical distancing whenever possible and wear face covers in accordance with current California Department of Public Health guidelines.

In the event an individual working under this Contract exhibits COVID-like symptoms, Contractor agrees that individual will not work on this Contract unless he/she can work remotely or is quarantined for 14 days or has a negative test result. Contractor has the ability, subject to notification to CDFW’s Contract Manager and with CDFW’s approval to substitute that individual with a similarly qualified worker. If the Contractor becomes aware that an employee tests positive or has been exposed to someone who tests positive for COVID-19, the Contractor must immediately notify the CDFW Contract Manager, at a minimum of within 24 business hours. At that juncture, the Contractor may not proceed with CDFW-related work until receiving direction from the CDFW Contract Manager.

SECTION 1- LEGAL BASIS OF AWARD

Pursuant to Fish and Game Code Section 1501.5(b), the California Department of Fish and Wildlife (CDFW or Grantor) is authorized to enter into this Grant Agreement (Agreement) and to make an award to Monterey County Water Resources Agency (Grantee) for the purposes set forth herein. Grantee accepts the grant on the terms and conditions of this Agreement. Accordingly, Grantor and Grantee (Parties) hereby agree as follows:

SECTION 2 - GRANT AWARD

- 2.01 Grant:** In accordance with the terms and conditions of this Agreement, including Section 5.06 – General Terms and Conditions, Grantor shall provide Grantee with a maximum of \$17,000,000 (Grant Funds) to financially support and assist Grantee’s implementation of the Nacimiento Reservoir to San Antonio Reservoir Interlake Tunnel, Spillway Raise, and Fish Exclusion System (Project).
- 2.02 Term:** The term of this Agreement is June 1, 2021, or upon Grantor approval, whichever is later, through June 30, 2023.

SECTION 3 – ELIGIBLE USES OF GRANT

Only Grantee expenditures that are necessary to implement the Project, that comply with applicable federal and State of California law, and that are made in accordance with Section 6 – Project Statement and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from Grant Funds.

SECTION 4 - GRANTEE’S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

- 4.01 Existence and Power:** Grantee is a public agency in the State of California, duly organized, existing, and acting pursuant to the California Water Code, Appendix, Chapter 52 and in good standing under the laws of California. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- 4.02 Binding Obligation:** This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with the Agreement’s terms.

SECTION 5 - GRANTEE’S AGREEMENTS

- 5.01 Purpose:** This Agreement is entered into by the Parties for the purpose of providing financial support to Grantee to complete the Project, specifically the activities identified within Section 6 - Project Statement. The Parties entered into a Memorandum of Agreement (MOA) concerning this Project on December 6, 2018. Such MOA is attached hereto as Exhibit 2 and made a part of this Agreement.
- 5.02 Project:** Grantee shall complete activities as set forth in Section 6 - Project Statement.
- 5.03 Use of Project Funds:** The CDFW will not make the Grant Funds available to Grantee until Grantee has: (1) received all necessary Project approvals; (2)

complied with the California Environmental Quality Act; and (3) secured all necessary funding for the Project.

Grantee agrees that only Grantee expenditures that are necessary to implement the Project, comply with applicable federal and State of California law, and made in accordance with Section 6 - Project Statement, and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from the Grant Funds. Grantee acknowledges that it may not transfer Grant Funds between or among budget line items without prior written approval from the CDFW Grant Manager in accordance with Section 9 – Budget and Payment.

- 5.04 Eligibility of Funds:** In the event that the California Budget Act does not provide sufficient appropriations to allow Grantor to fund the Project at the level specified in Section 2 – Grant Award and Section 9 – Budget and Payment of this Agreement, Grantor reserves the right to modify this Agreement to reflect a reduction in available funds, as an alternative to termination.
- 5.05 Submission of Reports:** Grantee shall comply with the format, content, and timing requirements set out in Section 8 – Reports. Failure to submit timely and accurate reports shall be considered evidence of non-compliance with this Agreement and shall permit termination of the Agreement by Grantor.
- 5.06 General Terms and Conditions:** Public Entities General Grant Provisions (Exhibit 1.a) is attached hereto and made a part of this Agreement.
- 5.07 Amendments:** This Agreement may only be amended in accordance with Section 5.06 – General Terms and Conditions. Grantee shall submit any request to amend the line item budget in writing to the CDFW Grant Manager no later than 120 days prior to the end of the term of this Agreement. Grantee must include an explanation of and justification for any such request.
- 5.08 Acknowledgement of Credit:** Grantee shall include signage, to the extent practicable, informing the public that the Project received funds through the California Department of Fish and Wildlife Local Assistance Grant. Further Grantee shall include appropriate acknowledgement of credit to the CDFW for Grantor's financial support when using any data and/or information developed under this agreement (e.g., posters, reports, publications, presentations).
- 5.09 Labor Code Requirements; Prevailing Wages:** State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the CDFW are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and the Department of Industrial Relations website at <http://www.dir.ca.gov>. Grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project if required by law to do so.

5.10 Environmental Compliance: Grantee shall not proceed with on the ground implementation until California Environmental Quality Act compliance and all necessary permits and consultations are secured.

5.11 California Business and Professions Code: Grantee shall be responsible for obtaining the services of an appropriately licensed professional or appropriately licensed professionals if required by the California Business and Professions Code, including but not limited to Section 6700 et seq. (Professional Engineers Act) and Section 7800 et seq. (Geologists and Geophysicists Act).

If Grantee fails to perform in accordance with the compliance provisions of this Agreement, Grantor shall have sole discretion to delay, interrupt, or suspend the work for which the Grant Funds are supplied.

SECTION 6 - PROJECT STATEMENT

6.01 Introduction: The Project includes construction of a tunnel connecting the Nacimiento and San Antonio Reservoirs in San Luis Obispo and Monterey Counties, near Paso Robles, California. The Project will divert water from Nacimiento Reservoir to San Antonio Reservoir that may have otherwise been spilled at Nacimiento Dam. The Nacimiento River basin produces nearly three times the average annual flow of the San Antonio River basin, therefore, capturing high Nacimiento river flows and diverting those flows to the San Antonio Reservoir increases the overall storage capacity of the system. Specifically, the purpose of this Project is to provide for increased aquifer recharge capability to enhance the Salinas Valley Groundwater Basin sustainability and provide a reduction in flood event volumes and a reduction in flood spills from the Nacimiento Reservoir. This Project will also lead to improved water management and conservation that can benefit local water needs and use, improve watershed health and resiliency, and the conservation of native fishes, including steelhead in the Salinas River watershed.

White Bass (*Morone chrysops*) are present in the Nacimiento Reservoir and have periodically been physically observed in the Nacimiento River, a tributary of the Salinas River. White Bass were introduced to Nacimiento Reservoir in 1965, but concerns about the spread of the fish during the 1970s resulted in management actions to eradicate the species in all but Nacimiento Reservoir and subsequent regulatory and state code changes to preclude White Bass from any waters of California other than Nacimiento Reservoir. This Project may affect the transfer of White Bass between the Nacimiento and San Antonio Reservoirs, and this Agreement is focused on White Bass management. Specifically, this Agreement is to fund structures that would prevent the movement of live White Bass between the Reservoirs.

6.02 Objectives: Specific objectives of this Project are to construct a fish exclusion system (fish screens) in a tunnel intake structure and physical components of the

tunnel outlet to prevent or inhibit the opportunity for the movement of White Bass through the tunnel from the Nacimiento Reservoir to the San Antonio Reservoir, while maintaining the tunnel diversion flow.

6.03 Project Description: Grantee will manage the Project as described below:

The Project will prevent the movement of live White Bass between the Nacimiento and San Antonio Reservoirs through the Interlake Tunnel. The Project entails the construction of a fish exclusion system defined as the Interlake Tunnel intake structure equipped with fish screens and appurtenant equipment located on the north shore of the Nacimiento Reservoir immediately west of the North Shore Boat Ramp. The components of this Project include those structures, equipment and features additional to a conventional tunnel intake required to comply with the MOA concerning this Project effective December 6, 2018.

The tunnel intake is a reinforced concrete structure approximately 72-feet wide and 288-feet long equipped with 1.75 mm rotating cylindrical fish screens and associated controls, gates, trash rack, equipment building, utilities and debris removal, and automated screen brushing system.

The final design and construction of this Project will be performed by a design-build contractor to be procured by Grantee. Grantee will provide oversight of the contractor's design and construction work to ensure compliance with the requirements of this Agreement as outlined in the MOA.

6.04 Location: The Project is located on approximately five acres of Grantee owned land located at the Lake Nacimiento Overflow Day Use Boat Ramp, approximately 4,200 feet west of the intersection of River Road and Nacimiento Lake Drive located at N 35 45 57 latitude; W 120 53 44 longitude in San Luis Obispo County, California (Property).

6.05 Project Site Access: Grantee shall give Grantor, and its employees and agents written permission to access the Property at least once every 12 months from the date of Grantor's Notice to Proceed until 25 years after the term of this Agreement (as set out in Section 2 - Grant Award) ends for purposes of inspections and monitoring.

6.06 Materials and Equipment: All materials and equipment are included in the design-build contractor's costs.

6.07 Project Implementation: Consistent with Grantee's proposal for the Project, Grantee will complete the following tasks in accordance with Section 6.08 – Schedule of Due Dates and Deliverables.

The project will be implemented by the Grantee through a design-build construction contract administered and overseen by Grantee. The construction

contract will incorporate contractor payment provisions for the components of the project identified as the following tasks:

Task 1 - Project Management and Administration: Grantee will provide technical and administrative services associated with performing and completing the work for this Project, including managing this Agreement, assuring all permits are finalized, administering subcontracts, invoicing and payments, drafting and finalizing progress, and final reports. The Grantee's Project Manager shall promptly notify the CDFW Grant Manager of events, Change Orders, or proposed changes that could affect the Scope of Work, budget, or schedule of work performed under this Grant.

Task 2 – Construction and Construction Management

This Task includes all construction-related activities, including Change Orders, required to implement this Project during the term of this grant. The Construction and Construction Management task consists of:

- a. **Mobilization and General Conditions** - Contractor mobilization and demobilization from the site. Compliance with all contract general conditions requirements including insurance, bonding, and labor agreements.
- b. **Sitework** - Design and implementation of a Storm Water Pollution and Prevention (SWPP) program. Cofferdam construction to protect the construction site from high lake elevation impacts.
- c. **Excavation** - Earthwork including site clearing, excavation with the structure, excavation of the approach channel, structural backfill and compaction, geogrid installation, bioretention swales, geotextile, parking lot excavation and gravel surface, and sidewalks.
- d. **Structures** - Includes reinforced concrete structures including approach slabs, main structure slab, control building slab, upstream walls, structure walls, control building walls, intake structure deck, concrete piers, and sidewalks.
- e. **Metals** - Traffic rated access hatches and doors, handrails, grated intake cover with supports, trash rack and support structure, tunnel and fish screen isolation gates, and bypass gate.
- f. **Screens and Appurtenances** - Includes brushed cylinder screens, debris boom, trash rake, and appurtenant equipment and controls.
- g. **Buildings** - Includes masonry control building, heating, ventilating, and air conditioning equipment and controls. Miscellaneous exterior improvements including bollards, chain link fencing, and gates.

- h. Electrical/Instrumentation** - Includes standby generator, transformers, transfer switches, panel boards, actuators, disconnects, conduit, security cameras, light poles, light fixtures, Programmable Logic Controller (PLC) cabinet, level indicating transmitter, fiber terminations, and connector housing.

6.08 Schedule of Due Dates and Deliverables:

<u>Task</u>	<u>Description</u>	<u>Deliverables</u>	<u>Estimated Completion Dates</u>
1	Project Management and Administration	Monthly Invoices	Due within 30 days following each calendar month during the grant period following grant execution
		Copies of executed contracts	Within 15 days of execution
		Draft Final Report	May 31, 2023
		Final Report	June 30, 2023
		Final Invoice	June 30, 2023
2	Construction and Construction Management	Monthly Construction Progress Reports	Monthly through the Project term submitted with Invoices
		Completed Facility	June 30, 2023

SECTION 7 - CONTACTS

The point of contact may be changed at any time by either party by providing a 10 day advance written notice to the other party. The Parties hereby designate the following points of contact during the Term of this Agreement:

CDFW Grant Manager:		Grantee Project Manager:	
Name:	Jonathon Mann	Name:	Brent Buche
Title:	Conservation Engineering Branch Manager	Title:	General Manager
Address:	1010 Riverside Parkway West Sacramento, CA 95605	Address:	1441 Schilling Place, North Bldg. Salinas, CA 93901
Phone:	(916) 599-0925	Phone:	(831) 755-4860
Email:	Jonathon.mann@wildlife.ca.gov	Email:	bucheb@co.monterey.ca.us

Direct all administrative inquiries to:

CDFW Grant Coordinator:		Grantee Project Coordinator:	
Name:	Christina Kashuba	Name:	Elizabeth Krafft
Title:	Contract Coordinator	Title:	Deputy General Manager
Address:	1010 Riverside Parkway West Sacramento, CA 95605	Address:	1441 Schilling Place, North Bldg. Salinas, CA 93901
Phone:	(916) 376-1672	Phone:	(831) 755-4864
Email:	Christina.kashuba@wildlife.ca.gov	Email:	krafftea@co.monterey.ca.us

SECTION 8 - REPORTS

8.01 Progress Reports: Grantee shall submit Monthly Construction Progress Reports that comply with the requirements below to the CDFW Grant Manager. The CDFW Grant Manager will provide Grantee with a sample Progress Report upon request.

Requirements:

1. Grantee name, the Project title, this Agreement number, and dates progress report covers;
2. Activities and tasks performed and/or completed, a summary of progress to date including progress since the last report, and a brief outline of upcoming work scheduled for the subsequent quarter;
3. Documentation of all subcontractor activities;
4. Updates on progress towards meeting project objectives, output and outcome performance measures;
5. Document delivery of any intermediate work products;
6. Costs incurred during the subject period, total of costs incurred to date, and the remaining balance;
7. Any problems encountered while performing the tasks and proposed solutions, timeline for resolution, and status of previously unresolved problems; and
8. Monthly Construction Progress Reports will be submitted electronically in PDF or Microsoft Word compatible format and conform to the template provided.

8.02 Draft and Final Report: Grantee shall submit a Draft Final Report and Final Report by the dates listed in Section 6.08 – Schedule of Due Dates and Deliverables. Grantee shall submit a Draft Final Report for review by the CDFW Grant Manager, at least 30 days prior to the end of the grant term. The report shall summarize the life of the Agreement and describe the work and results pursuant to Section 6 - Project Statement. Upon approval from the CDFW Grant Manager, the Final Report can be submitted. The Draft and Final Reports will be submitted, electronically, to the CDFW Grant Manager upon completion of the Project tasks. The CDFW Grant Manager will provide Grantee a sample Final Report template, upon request.

SECTION 9 – BUDGET AND PAYMENT

9.01 Budget Details and Funding Summary: Grantor will provide an amount not to exceed \$17,000,000 as detailed in the Line Item Budget Detail (Budget) below.

Any changes or modifications to a fund source indicated below must be promptly reported to CDFW Grant Manager in writing.

Task Budget Table				
Task	Description	CDFW Grant Funding	Grantee In-kind Services	Project Total
Task 1: Project Management and Administration	Technical and administrative services	\$425,000	\$0	\$425,000
Task 2: Construction and Construction Management	All construction-related activities	\$16,575,000	\$0	\$16,575,000
Total Budget		\$17,000,000	\$0	\$17,000,000

Line Item Budget Detail				
		CDFW Grant Funding	Matching Funds/ Cash	Project Total
Task 1: Project Management and Administration				
A. PERSONAL SERVICES	Rate*			
General Manager	\$254	\$64,899	\$0	\$64,899
Deputy General Manager	\$224	\$86,019	\$0	\$86,019
Accountant	\$121	\$77,627	\$0	\$77,627
Senior Water Resources Engineer/Hydrologist	\$164	\$146,863	\$0	\$146,863
Associate Water Resources Engineer/Hydrologist	\$139	\$49,592	\$0	\$49,592
Subtotal: Personnel Services		\$425,000	\$0	\$425,000
Staff Benefits (*Included in the hourly rate)		\$0	\$0	\$0
Total Personnel Services		\$425,000	\$0	\$425,000
Task 2: Construction and Construction Management				
B. OPERATING EXPENSES				
a. Mobilization and General Conditions		\$1,033,243	\$0	\$1,033,243
b. Sitework		\$590,182	\$0	\$590,182
c. Evacuation		\$4,840,127	\$0	\$4,840,127
d. Structures		\$6,224,863	\$0	\$6,224,863

Line Item Budget Detail			
	CDFW Grant Funding	Matching Funds/ Cash	Project Total
e. Metals	\$1,146,494	\$0	\$1,146,494
f. Screens and Appurtenances	\$2,354,625	\$0	\$2,354,625
g. Buildings	\$124,923	\$0	\$124,923
h. Electrical/Instrumentation	\$260,543	\$0	\$260,543
Subtotal: Operating Expenses:	\$16,575,000	\$0	\$16,575,000
C. GRAND TOTAL	\$17,000,000	\$0	\$17,000,000

Funding Sources Summary			
Source of Funds	Cash	In-Kind	Total
CDFW Local Assistance Grant Program	\$17,000,000	\$0	\$17,000,000
Applicant	\$0	\$0	\$0
Total Project Cost	\$17,000,000	\$0	\$17,000,000

- 9.01.1 Budget Flexibility:** Grantee must submit all budget line item revision requests, in writing, to the CDFW Grant Manager, prior to implementing any changes. All proposed budget changes require prior approval from the CDFW Grant Manager, regardless of budgetary impact.

Informal Budget adjustments between existing line items may be permitted. Any revision to the Line Item Budget Detail must comply with Section 5.07 – Amendments. Considerations for informal Budget adjustments, if granted, must include:

1. Revisions which are consistent with the purpose, objectives, and description of the Project as detailed in Section 6 - Project Statement;
2. Revisions that do not increase or decrease the total Agreement amount;
3. Revisions that do not substitute key personnel; and
4. Line item shifts **within** a budget category (e.g., Field Supplies to Travel) up to \$25,000 or 10% of the Agreement amount, whichever is less.

Formal Budget adjustments will be considered by the Grantor, with prior approval from the CDFW Grant Manager. An amendment to the Agreement is required if a formal Budget adjustment is approved. Considerations for formal amendments, if granted, include:

1. Shifting Grant Funds between budget categories (e.g., Personnel Services to Operating Expenses);
2. Increasing or decreasing the total Agreement amount;

3. Substituting key personnel; or
4. Line item shifts **within** a budget category (e.g. Field Supplies to Travel) that exceeds \$25,000 or 10% of the Agreement amount, whichever is less.

9.02 Payment Provisions

- 9.02.1 Disbursements:** Grantor will disburse Grant Funds to Grantee not more frequently than monthly, in arrears, upon receipt of an original itemized invoice and any required mandatory documentation as identified in Section 6.08 – Schedule of Due Dates and Deliverables.

Grant disbursements will be mailed to the following Grantee address:

Grantee Name:	Monterey County Water Resources Agency
Attention:	General Manager
Address:	1441 Schilling Place, North Building Salinas, CA 93901

- 9.02.2 Invoice Documentation:** Each invoice for payment must be accompanied by a written description, not to exceed two pages in length, of Grantee's performance under this Agreement since the time the previous such report was prepared. The report shall describe the types of activities and specific accomplishments during the period for which the payment is being made rather than merely listing the number of hours worked during the reporting period. The Final Invoice must include a budget summary of all cost share expenditures by fund source, as applicable. The CDFW Grant Manager will provide Grantee with a sample invoice template upon request. The Final Invoice is due in accordance with Section 6.08 – Schedule of Due Dates and Deliverables. The invoice package must be either mailed hard copy or electronic submission to the CDFW Grant Manager contact located in Section 7 – Contacts.

Requirements: The invoice shall contain the following information:

1. The word "Invoice" should appear in a prominent location at the top of the page(s);
2. Printed name of Grantee on company letterhead;
3. Grantee's business address, including P.O. Box, City, State, and Zip Code;
4. Name of the CDFW Region/Division being billed;
5. The invoice date and the time period covered; i.e., the term "from" and "to";
6. This Agreement number and the sequential number of the invoice (i.e., Q2081001-Invoice 1);

7. The invoice must be itemized using the categories and following the format of the Budget;
8. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice. The total amount due shall include all costs incurred by Grantee under the terms of this grant;
9. The original signature of Grantee; and
10. Grantee must provide supporting documentation for the invoice and actual receipts.

Q2081001

MONTEREY COUNTY WATER RESOURCES AGENCY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below the signatures.

AUTHORIZED AGENT FOR GRANTEE

By:

Signature: _____

Printed Name: Brent Buche

Title: General Manager

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:

Signature: _____

Printed Name: Valinda Roberts

Title: Chief, Business Operations

Date: _____

This agreement is exempt from DGS-OLS approval, per SCM 4.06.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

1. **APPROVAL**: This Agreement is of no force or effect until signed by both Parties and approved by CDFW or Grantor. Grantee may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or Agreement not incorporated in this Agreement is binding on either of the Parties.
3. **ASSIGNMENT**: This Agreement is not assignable by Grantee, either in whole or in part, without the consent of CDFW in the form of a formal written amendment.
4. **AUDIT**: Grantee agrees that CDFW, the Department of General Services (DGS), the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code, CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Grantee agrees to indemnify, defend and save harmless the State of California, CDFW, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all of Grantee's employees or agents, contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.

The State of California shall defend, indemnify and hold Grantee, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, or its agencies, their respective officers, agents or employees.
6. **DISPUTES**: Grantee shall continue with the responsibilities under this Agreement during any dispute.
7. **INDEPENDENT CONTRACTOR**: Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of CDFW. Grantee acknowledges and promises that CDFW is not acting as an employer to any individuals furnishing services or work pursuant to this Agreement.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

8. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
10. **LICENSES AND PERMITS (If Applicable):** Grantee is responsible for obtaining all licenses and permits required by law for accomplishing any work required in connection with this Agreement. Costs associated with permitting may be reimbursed under this Agreement only if approved in the budget detail and payment provisions section.
11. **RIGHTS IN DATA:** Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by Grantee, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.
12. **CONTINGENT FUNDING:** It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of State appropriation of funds for the mutual benefit of both Parties in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available pursuant to the California State Budget Act for the fiscal year(s) covered by this Agreement for the purposes



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature of any statute enacted by the Legislature which may affect the provisions, terms or funding of this Agreement in any manner.

It is mutually agreed that if the Legislature does not appropriate sufficient funds for the Agreement, the State has the option to terminate the Agreement under the termination clause or to amend the Agreement to reflect any reduction of funds. CDFW has the option to invalidate the contract under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in Grant Funds.

13. RIGHT TO TERMINATE:

- a. This agreement may be terminated by mutual consent of both parties or by any party upon thirty (30) days written notice and delivered by USPS First Class or in person.
- b. In the event of termination of this Agreement, Grantee shall immediately provide CDFW an accounting of all funds received under this Agreement and return to CDFW all Grant Funds received under this Agreement which have not been previously expended to provide the services outlined within this Agreement.
- c. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. CDFW shall reimburse Grantee for all allowable and reasonable costs incurred by it for the Project, including foreseeable and uncancellable obligations. Upon notification of termination from CDFW, Grantee shall use its reasonable efforts to limit any outstanding financial commitments.

14. CONFIDENTIALITY OF DATA: Grantee shall protect from disclosure all information made available by CDFW. Grantee shall not be required to keep confidential any data or information which is publicly available, independently developed by Grantee, or lawfully obtained from third parties. Written consent of CDFW must be obtained prior to disclosing information under this Agreement.

15. DISCLOSURE REQUIREMENTS: Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with CDFW. The disclosure statement shall include this Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.

If Grantee or any subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports. Grantee shall include in each of its subcontracts for work under this Agreement, a provision which incorporates the requirements stated within this section.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

16. USE OF SUBCONTRACTOR(S): If Grantee desires to accomplish part of the services through the use of one (1) or more subcontractors, the following conditions must be met:

- a. Grantee shall submit any subcontracts to CDFW for inclusion in the grant file;
- b. The Agreement between the primary Grantee and the subcontractor must be in writing;
- c. The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and
- d. Upon termination of any subcontract, CDFW Grant Manager shall be notified immediately, in writing.

Grantee shall ensure that any subcontract in excess of \$100,000 entered into as a result of this Agreement contains all applicable provisions stipulated in this Agreement.

17. POTENTIAL SUBCONTRACTOR(S): Nothing contained in this Agreement or otherwise shall create any contractual relation between CDFW, and any subcontractor(s) and no subcontract shall relieve Grantee of its responsibilities and obligations hereunder. Grantee agrees to be as fully responsible to CDFW for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Grantee. Grantee's obligation to pay its subcontractor(s) is an independent obligation from CDFW's obligation to make payments to Grantee. As a result, CDFW shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

18. TRAVEL AND PER DIEM (if applicable): Grantee agrees to pay reasonable travel and per diem to its employees under this Agreement. The reimbursement rates shall not exceed those amounts identified in the California Department of Human Resources travel reimbursement guidelines. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from CDFW.

19. LIABILITY INSURANCE (as applicable): Unless otherwise specified in the Agreement, when Grantee submits a signed Agreement to the State, Grantee shall also furnish to the State either proof of self-insurance or a certificate of insurance stating that there is liability insurance presently in effect for Grantee of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. Grantee agrees to make the entire insurance policy available to the State upon request.

The certificate of insurance will include provisions a, b, and c, in their entirety:

- a. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State;
- b. The State of California, its officers, agents, employees, and servants are included as additional insured, by insofar as the operations under this Agreement are concerned; and
- c. The State will not be responsible for any premiums or assessments on the policy.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

Grantee agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the (DGS), and Grantee agrees that no work or services shall be performed prior to giving of such approval. In the event Grantee fails to keep in effect, at all times, insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

CDFW will not provide for, nor compensate Grantee for any insurance premiums or costs for any type or amount of insurance. The insurance required above, shall cover all Grantee supplied personnel and equipment used in the performance of this Agreement. When applicable, if subcontractors performing work under this Agreement do not have insurance equivalent to the above, Grantee's liability shall provide such coverage for the subcontractor, except for coverage for error, mistake, omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.

20. **GRANTEE STAFF REQUIREMENTS:** Grantee represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with CDFW.
21. **PROPERTY ACQUISITIONS AND EQUIPMENT PURCHASES:** Property, exclusive of real property, as used in this exhibit shall include the following:
 - a. Equipment – Tangible property (including furniture and electronics) with a unit cost of \$5,000 or more and a useful life of four (4) years or more. Actual cost includes the purchase price plus all costs to acquire, install, and prepare the equipment for its intended use.
 - b. Furniture, including standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc.
 - c. Portable Assets, including items considered 'highly desirable' because of their portability and value, e.g., calculators, computers, printers, scanners, shredders, cameras, etc.
 - d. Electronic Data Processing (EDP) Equipment, including all computerized and auxiliary automated information handling, including system design and analysis; conversion of data; computer programming; information storage and retrieval; voice, video and data communications; requisite system controls; simulation and all related interactions between people and machines.

Grantee may purchase property under this Agreement only if specified in the Budget section. All property purchased by Grantee is owned by Grantee. CDFW does not claim title or ownership to



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

[Q2081001]

[Monterey County Water Resources Agency]

the property but, requires Grantee to maintain accountability for all property purchased with grant funds.

Title or ownership to property with a unit cost of \$5,000 or more may be retained by Grantee or Grantor upon end of the grant cycle; final disposition will be coordinated by CDFW's Grant Manager.

Before property purchases made by Grantee are reimbursed by CDFW, Grantee shall submit paid Grantee receipts identifying the Grant Agreement Number, purchase price, description of the item(s), serial number(s), model number(s), and location, including street address where property will be used during the term of this Agreement. Said paid receipts shall be attached to Grantee's invoice(s).

Grantee shall keep, and make available to Grantor, adequate and appropriate records of all property purchased with the Grant Funds.

Prior written authorization by the CDFW Grant Manager shall be required before Grantee will be reimbursed for any property purchases not specified in the budget. Grantee shall provide to CDFW Grant Manager, all particulars regarding the necessity for such property and the reasonableness of the cost.

Property will only be considered for purchase approval if no other equipment owned by the applicant is available and suitable for the project.

Grant Funds cannot be used to reimburse the project for equipment obtained prior to the beginning of the grant term.

Grant Funds cannot be used for property if specifically prohibited in the authorizing Legislation or restricted in the terms of the program.

Should this Agreement be cancelled for any reason, any property purchased with Grant Funds shall be returned to Grantor.

State policies and procedures applicable to procurement with nonfederal funds, shall apply to procurement by Grantee under this Agreement, provided that procurements conform to applicable State law and the standards identified in this exhibit. These include but are not limited to: statutes applicable to State agencies; statutes applicable to State colleges and universities; public works projects; the California Constitution governing University of California contracting, the State Administrative Manual; statutes applicable to specific local agencies; applicable city and county charters and implementing ordinances including policies and procedures incorporated in local government manuals or operating memoranda.

MEMORANDUM OF AGREEMENT
between
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
and
THE MONTEREY COUNTY WATER RESOURCES AGENCY

regarding the

NACIMIENTO RESERVOIR INTERLAKE TUNNEL PROJECT AND SAN ANTONIO
SPILLWAY MODIFICATION PROJECT

RECITALS

- A. The California Department of Fish and Wildlife (“CDFW”) is a Department of the California Natural Resources Agency, functioning as a trustee agency of the State of California that manages California's diverse fish, wildlife and plant resources, and the habitats upon which they depend; and
- B. The Monterey County Water Resources Agency (“Agency”) is a flood control and water agency established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52, and is the successor to the Monterey County Flood Control and Water Conservation District established in 1947, also by special act of the state legislature; and
- C. The Agency and CDFW recognize the unique potential to partner with each other, the County of Monterey, landowners, and other partners to develop improved water management, storage, and conservation that can benefit local water needs and use, the agricultural community, improve watershed health and resiliency, and the conservation of native fishes, including steelhead in the Salinas River watershed. This MOA represents the initiation of a partnership to pursue these benefits; and
- D. The Agency proposes to construct a tunnel connecting the Nacimiento and San Antonio Reservoirs in San Luis Obispo and Monterey Counties, respectively, (“Tunnel Project”). The purpose of the tunnel is to fully utilize the existing storage capacity in San Antonio Reservoir, thus providing for increased aquifer recharge capability to enhance Basin sustainability, and, concomitantly providing additional flood management capability through a reduction in flood event volumes and a reduction in flood spills from the Nacimiento Reservoir; and
- E. The Agency also proposes to raise the spillway at the San Antonio Reservoir (“Spillway Modification Project”) in Monterey County in conjunction with the Tunnel Project in order to further increase the storage capacity of San Antonio Reservoir, which additional storage capacity increases the benefits obtained from construction of the tunnel alone and increases the Agency’s aquifer recharge capability (collectively, the Tunnel Project and Spillway Modification Project are referred to as the “Projects”). The Spillway Modification Project is considered as part of this agreement, because it would affect the

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transfer of White Bass between the Nacimiento and San Antonio Reservoirs when a tunnel links the reservoirs, and this Memorandum of Agreement is focused on the Tunnel Project and White Bass management. CDFW and the Agency will work with the Division of Safety of Dams to investigate and determine the feasibility of including a structure that would prevent the movement of live White Bass through the San Antonio Reservoir's spillway; and

- F. The Agency intends to design the Tunnel Project to approximately 60% design completion utilizing design build procurement documents, conduct a Proposition 218 vote to obtain funding and then issue a design-build contract for the remaining design and construction; and
- G. The Agency intends to construct the Spillway Modification Project utilizing the design-bid-build method of procurement; and
- H. White Bass (*Morone chrysops*), native to St. Lawrence-Great Lakes, Hudson Bay and Red River Basin, and Mississippi River basins from Quebec to Manitoba and south to Louisiana, are present in the Nacimiento Reservoir and have periodically been physically observed in the Nacimiento River, a tributary of the Salinas River. White Bass were introduced to Nacimiento Reservoir in 1965, but concerns about the spread of the fish during the 1970s resulted in management actions to eradicate the species in all but Nacimiento and subsequent regulatory and state code changes to preclude White Bass from any waters of California other than Nacimiento Reservoir; and
- I. Thus far, White Bass have not been detected in the San Antonio Reservoir but have been detected in the Salinas River. White Bass are a non-native species listed by state regulation as Detrimental as they may alter/affect existing sport fisheries resulting in a shift from more preferred gamefish to a fishery dominated by White Bass. Additionally, they pose a threat to native fish species, including vulnerable steelhead. Steelhead trout inhabiting the Salinas River Basin are part of the South-Central California Coast Evolutionary Significant Unit (SCCC-ESU) as defined by the National Marine Fisheries Service (NMFS). The NMFS listed steelhead trout in the SCCC-ESU as a federally threatened species under the Federal Endangered Species Act and CDFW is a co-manager for the SCCC-ESU; and
- J. California Fish and Game Code (F&G) Section 6400 makes it unlawful to place, plant or cause to be planted in any waters of the State any live white bass without first submitting it for inspection and securing written permission from CDFW. F&G Section 6400.5 makes it unlawful to transport or possess any live white bass unless it is first submitted for inspection to, and written permission is obtained from CDFW; and
- K. The CDFW and the Agency have been conferring in relation to the Agency's request for written permission from CDFW under F&G Sections 6400 and 6400.5, in the event of incidental passage of White Bass from the Nacimiento Reservoir to the San Antonio Reservoir; and

- L. CDFW and the Agency have identified specific physical structures and parameters to the structures, including a contemporary fish exclusion screen (“fish screen”), a tunnel intake, and physical components of the tunnel outlet, and operating conditions that from an engineering perspective can be reasonably and feasibly incorporated into the Tunnel Project design to prevent or inhibit the opportunity for the movement or survival of White Bass through the Tunnel while maintaining the tunnel diversion flow; and
- M. CDFW acknowledges that it has received from the Agency a document prepared by the Agency and titled Regional Context and Potential Ecological Benefits, interlake Tunnel and Spillway Modification Project (2015); and
- N. By entering into this MOA, CDFW and the Agency intend that CDFW, as a California Environmental Quality Act (CEQA) responsible and trustee agency, will provide guidance to the Agency in the completion of Agency’s Interlake Tunnel and Spillway Modification Projects Environmental Impact Report (EIR) that analyzes the potentially significant effects arising from implementation of both Projects, including an analysis of the possible incidental passage of White Bass through the Tunnel; and
- O. CDFW has provided a path to coverage under the California Fish and Game Code for the Agency in the event that White Bass move through the tunnel, despite the Agency’s incorporation of certain measures, in consultation with CDFW, to avoid or minimize White Bass passage or survival through the Tunnel; and
- P. The Agency and CDFW have established, a centralized and coordinated method for the internal communication within the CDFW, and between CDFW as a whole and the Agency, in the Agency’s application for the necessary permits from the CDFW for the Projects; and
- Q. CDFW desires to cooperate with and assist the Agency in the Tunnel Project with respect to implementing, maintaining and monitoring measures to prevent or inhibit the passage and survival of White Bass out of the Nacimiento and San Antonio Reservoirs; and
- R. The Agency is willing to incorporate reasonably feasible measures into the Projects, which prevent or inhibit White Bass to viably pass into San Antonio Reservoir and spawn or escape the reservoir and which also contributes to protection for the Steelhead in the Salinas River and its tributaries.
- S. Through this Agreement, CDFW and the Agency wish to identify those features of the Tunnel Project that would facilitate CDFW’s granting of permission under sections 6400 and 6400.5 of the Fish and Game Code.

NOW THEREFORE, CDFW and Agency agree as follows:

1. Effective Date and Term.

This Memorandum of Agreement (MOA) will be effective as of the date last signed by either of the parties and shall remain in effect for 25 years after construction of the Projects have been certified by the Agency as complete. This MOA may be amended annually by mutual written agreement of the parties.

2. Agency Projects Principles.

- A. It is the Agency's position that the Projects provide flood control, water recharge, and conservation stream flows that will generally be beneficial. Also, the Agency anticipates that the mitigation measures incorporated as a result of the EIR and agency consultations will result in Projects that are beneficial to stakeholders and the region.
- B. It is the Agency's position that feasibility of the Projects includes technological, engineering, environmental, and economic factors. The Projects must be developed incorporating feasible design and operational features. Feasibility includes what is technologically feasible, environmentally desirable and economically viable.
- C. In order to design and environmentally assess the Projects and prepare a Proposition 218 engineer's report that comprehensively captures the true and full costs of the Projects, it is the Agency's position that there must be relative certainty concerning the design features, construction, operational and maintenance costs, and readily available sources of funding.
- D. Agency and CDFW will identify a coordinated and timely path for the processing of those analyses, applications, and associated reviews necessary to prepare the Projects for final CDFW regulatory permit review and decision.

3. Commitments of the Parties.

A. Design of the Tunnel Project

I. Agency.

- a. Incorporate into the design-build contract the incremental cost to design and construct an intake structure in Lake Nacimiento sufficient to accommodate the installation of a fish screen and associated intake and outlet characteristics to provide a low probability of White Bass entering the tunnel while also maintaining the tunnel diversion flow. The intake structure will include the incremental improvements over a conventional basic intake structure to provide an entrance and approach channel suitable to accommodate the installation of the fish screen. The Agency and CDFW have agreed to design parameters and acceptable ranges for a fish screen and associated intake structure. Those parameters are attached as Exhibit A.

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- i. For each design submittal to CDFW, CDFW shall provide its comments on said design specifications and drawings to the Agency within a reasonable time frame after the Agency provides those design specifications and drawings to CDFW. The Agency shall incorporate those CDFW changes that are in accordance with the design parameters and acceptable ranges for each parameter as mentioned above into the final design specifications and drawings at Agency's cost and expense.
- ii. If prior to or after completion of the Projects, either (a) CDFW determines that White Bass are established in Lake San Antonio or (b) Fish and Game Code Section 6400 or Section 6400.5 is changed to allow White Bass in Lake San Antonio, the Parties will meet and confer as provided in sections 3.C.II.i and 3.D below.

B. CEQA Process

- I. The Parties agree that the Agency shall serve as the Lead Agency for the purposes of the California Environmental Quality Act (CEQA) because the Agency is the public agency that must provide the initial approval of the proposed projects.
- II. CDFW shall serve as responsible agency under CEQA because it will be responsible for issuing certain permits for the projects, including (without limitation) authorization under Section 1600 et seq. (streambed alteration) and 6400 and 6400.5 of the Fish and Game Code. CDFW is also a Trustee Agency under CEQA and this MOA is not intended to affect CDFW's role as a CEQA Trustee Agency.
- III. The Agency shall prepare the Interlake Tunnel and Spillway Modification Projects EIR that will:
 - a. Analyze the potentially significant environmental effects related to the potential movement of White Bass from Nacimiento Reservoir to San Antonio Reservoir and the Salinas River.
 - b. Use the foregoing facility descriptions in the "project description" for the EIR.
 - c. Thoroughly analyze and discuss potential intake locations, designs and impacts of the proposed Projects on State and federally listed and special status species.
 - d. Mitigate, to the extent feasible, any significant adverse effect on the environment from the proposed project that may result from the movement of White Bass from Nacimiento Reservoir to San Antonio Reservoir or other locations in the Salinas Valley.

- e. Use an integrated groundwater and surface water flow model developed through Monterey County's Salinas River Groundwater Basin Investigation to evaluate reservoir releases that will avoid and minimize the impacts of the projects on downstream habitat. The modeling assumptions and constraints in the analysis shall be clearly outlined in the EIR and discussed as part of the scoping process with CDFW and NMFS. Notwithstanding the prior sentence, the Agency shall make the final determination on all modeling assumptions and constraints.

IV. CDFW shall serve as a Responsible Agency under CEQA and shall:

- a. Provide timely comments on drafts of the EIR and any other documents/models circulated to CDFW by the Agency for review and comment.
- b. CDFW shall commence its process to review and issue the permits needed for the construction and operation of the Projects pursuant to timelines provided in the Fish and Game Code, and where no timelines are provided in Code in a timely manner, given available CDFW staffing and resources, provided that the project to be implemented conforms to the design specifications and drawings requested by CDFW and the Agency has certified its EIR for the Projects.

C. Subsequent Fisheries Monitoring

- I. If financial and staff resources become available for these Projects, two (2) years after the completion of the Tunnel Project, CDFW will commence monitoring for White Bass in both reservoirs, the Salinas River, and relevant tributaries to the Salinas River. CDFW will endeavor to make fisheries monitoring a multiple party activity, including NMFS and other interested and able fisheries and water organizations. The Agency will endeavor to participate in monitoring if financial and staff resources are available.
- II. If any life stage of White Bass are detected in San Antonio Reservoir or the Salinas River, CDFW will consider potential options to: 1) contain; and 2) eradicate White Bass. CDFW shall immediately inform the Agency of the detection and will confer with the Agency and other appropriate fisheries and water management organizations.
 - i. CDFW and the Agency shall meet and confer to re-evaluate reservoir and tunnel management to determine if different management actions or additional physical attributes to the Project are feasible and would better control White Bass immigration to the San Antonio Reservoir, San Antonio River, or Salinas River. The Agency shall cooperate in CDFW's discussions and planning.

- D. If different management actions or additional physical attributes to the projects are identified as feasible and would better control White Bass distribution and movement, the Parties shall meet and confer to determine the most appropriate method for moving forward with implementing such management actions or additional physical attributes, while preserving the Project Objectives as presented in the EIR. At a minimum, the Parties agree to assist each other to identify potential funding sources and the process for acquiring that Funding.

The Agency and CDFW agree that:

- I. The Agency is responsible for costs associated with constructing and implementing the projects as described in the final (certified) EIR and applicable designs approved by the Agency.
 - II. Construction of the projects is dependent upon availability of local assessments, supplemented by some state financial assistance. Implementation of design, operational and other project features is dependent upon timely availability of supplemental funding.
 - III. Contingent on available funds and staffing becoming available for monitoring, CDFW will lead for fisheries monitoring associated with the reservoirs, the Salinas River, and associated tributaries in the watershed after completion of the Project. CDFW will be responsible for coordinating with the Agency, NMFS, United States Fish and Wildlife Service, and other organization that may be part of such monitoring.
 - IV. Within the limitations of its mandates and its resources, and in pursuing the activities undertaken in this MOA, if CDFW becomes aware of funding sources or opportunities that might be available for elements of the Projects, CDFW will bring those opportunities to the attention of the Agency.
 - V. In the event the result of the Proposition 218 election identified in Recital F is not affirmative in securing funding for the remaining design and construction of the Projects, then this MOA shall be null and void.
- E. Construction

The Agency shall incorporate all the measures proposed by CDFW, reflected in Exhibit A __, to protect against the adverse impacts of expanding White Bass through the tunnel into San Antonio Reservoir.

- F. CDFW anticipates that, based on the information it currently has, it will be able to authorize the incidental transfer of White Bass between the Nacimiento and San Antonio Reservoirs under California Fish and Game Code sections 6400 and 6400.5 if the Agency constructs the tunnel incorporating those measures specified in this MOA and in accordance with the mitigation measures appearing in the Tunnel Project's certified EIR to avoid or minimize White Bass passage or survival through the Tunnel Project.

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4. General Provisions.

A. No Assignment.

Neither party shall assign or transfer this MOA, or any part thereof, without the written consent of the other Party at least 30 days prior to the assignment or transfer.

B. Independent Contractor.

Nothing in this MOA shall be construed or interpreted to make the Agency or any Agency employee anything but independent contractors and in all the Agency's activities and operations pursuant to this MOA, neither the Agency nor Agency employee shall for any purposes be considered employees or agents of the CDFW.

C. Authority to Bind the CDFW.

It is understood that the Agency, in the performance of any and all duties under this MOA, has no authority to bind the CDFW to any agreements or undertakings with respect to any and all persons or entities with whom the Agency deals in the course of business.

D. Authority to Bind the Agency.

It is understood that the CDFW, in the performance of any and all duties under this MOA, has no authority to bind the Agency to any agreements or undertakings with respect to any and all persons or entities with whom the CDFW deals in the course of business. This section does not affect CDFW's administration and enforcement of the Fish and Game Code including but not limited to issuing permits and approvals under that code.

E. Notices.

- I. Notices permitted or required to be given to the respective parties under this MOA shall be deemed given (1) when personally delivered to the Agency or CDFW; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the CDFW offices in Sacramento, California, or to the Agency's office in Salinas, California), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) twenty-four (24) hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) three (3) days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below. All notices shall be in writing.

- II. Notices mailed to the parties shall be addressed as follows:

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To CDFW:

Charlton H. Bonham
Director
California Department of Fish and
Wildlife
1416 Ninth Street
Sacramento, CA 95814
Phone: 916-653-7667
Fax: 916-653-7387

To the Agency:

David E. Chardavoyne
General Manager
Monterey County Water Resources Agency
1441 Schilling Place / PO Box 930
Salinas, CA 93901
Phone: 831-755-4860
Fax: 831-424-7935

The mailing addresses, addressees, and fax numbers specified in this paragraph may be changed by either party, by giving notice to the other in the manner provided herein.

F. Modifications.

This MOA may be modified or amended only by prior-to 3-day written agreement of the parties. No waiver or modification of this MOA or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

G. No Waiver.

- I. No covenant or condition of this MOA can be waived except by the written consent of the CDFW. Forbearance or indulgence by the CDFW in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Agency. The CDFW shall be entitled to invoke any remedy available to the CDFW under this MOA or by law or in equity despite said forbearance or indulgence.
- II. No covenant or condition of this MOA can be waived except by the written consent of the Agency. Forbearance or indulgence by the Agency in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the CDFW. The Agency shall be entitled to invoke any remedy available to the Agency under this MOA or by law or in equity despite said forbearance or indulgence.

H. Sole Agreement.

This MOA contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this MOA shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

I. Venue.

If any party herein initiates an action to enforce the terms hereof or declare rights Hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

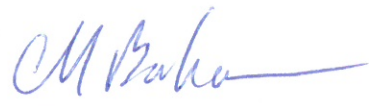
J. Construed Pursuant to California Law.

The parties hereto agree that the provisions of this MOA will be construed pursuant to the laws of the State of California.

IN WITNESS WHEREOF, CDFW, AGENCY, and COUNTY have caused this Memorandum of Agreement to be executed:


CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Dated: Nov. 5, 2018

By: 
Charlton H. Bonham, Director

Dated: 6 December 2018

MONTEREY COUNTY WATER RESOURCES AGENCY

By: 
David E. Chardavoyne, General Manager

Dated: 12/5/18

BOARD OF SUPERVISORS OF THE MONTEREY
COUNTY WATER RESOURCES AGENCY

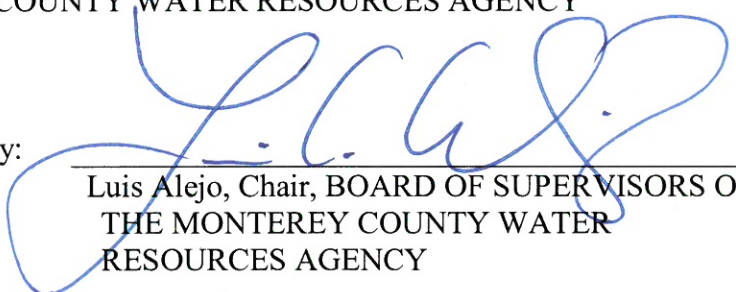
By: 
Luis Alejo, Chair, BOARD OF SUPERVISORS OF
THE MONTEREY COUNTY WATER
RESOURCES AGENCY

Exhibit A**Monterey County Water Resources Agency
Interlake Tunnel and Spillway Modification Project****Fish Screen Design Parameters and Operational Criteria**
(White Bass Exclusion)

The following criteria and parameters guide the design, construction, and operation of a fish screen and water intake structure. The criteria and parameters are reasonably determined to minimize or avoid the passage of White Bass through the proposed Interlake Tunnel using feasible design features and equipment.

The fish screen design requires a rotating cylindrical wedgewire screen with external and internal brush cleaning systems equivalent to screens manufactured by Intake Screens, Inc. (ISI).

Criteria	Units	Value	Comments
Max. Normal Nacimiento Water Surface Elevation (WSEL)	ft	800.0	
Min. Nacimiento Tunnel Operations WSEL	ft	760.0	
Maximum Top of Screen Elevation	ft	760.0	Criterion applies if screen opening size is 0.5 mm, which is expected to provide White Bass exclusion down to the larvae size.
		740.0	Criterion applies if the fish screen opening size is greater than 0.5 mm. This top of screen elevation provides at least 20 ft of submergence for all tunnel operations. This reduces the potential occurrence of White Bass at the tunnel inlet since White Bass are expected to be in the top 20 ft of the water column.
Minimum Bottom of Screen Elevation	ft	728.5	
Average Design Flow	cfs	600	
Maximum Design Flow	cfs	1,400	
Screen Approach Velocity	fps	0.4 – 2.0	
Maximum Added Head Loss	ft	< 2	

Screen Opening Size Range	mm	0.5 min – 1.75 max	Preference is given to 0.5 mm since White Bass eggs and larvae can be smaller than 1.75 mm. Typical screen opening size of 1.75 mm in the narrow direction is per NMFS fish screen design criteria which was set for minimizing entrainment of salmonid fry and maximizing fish protection.
Screen Porosity (min)	%	22	
Screen Guides and Seals Gap	mm	0.5 min – 1.75 max	No gaps greater than the maximum screen opening defined above.
Porosity Control (for flow distribution)	-	Yes	
Max. Head Differential for Screen Structural Integrity	ft	10	Provide continuous screening whenever there is tunnel flow. A quick closure feature for the downstream valve at San Antonio Reservoir will be included to shut down tunnel flow if the Maximum Added Head Loss occurs.
Post-Construction Evaluation	-	See comment	<ol style="list-style-type: none"> 1. All components of the fish screen will be inspected to verify conformance with the screen opening size criterion. 2. A post construction hydraulic evaluation will be conducted at a high tunnel flow to confirm that the cleaning systems works well at the higher end of the range of design approach velocities.

Criteria	Units	Value	Comments
Tunnel inside diameter	Ft	Not less than 10.0	
Operations and Maintenance Plan	-	See comment	An O&M plan will, at a minimum, outline operational criteria, frequency of inspections and any maintenance requirements.
Fish Screen Cleaning System	-	See comment	External and internal brush cleaning systems capable of operating continuously.
Debris Management System	-	See comment	Floating debris booms at the entrance to the approach channel, trash rack in the intake approach channel, collected debris removal systems.

WSEL = water surface elevation; fps = feet per second, cfs = cubic feet per second, ft = feet, in = inch, mm = millimeter, % = percent
 NMFS = National Marine Fisheries Service
 MCWRA = Monterey County Water Resource Agency